which was rejected by the trial court. *Held*, the evidence offered by the plaintiff should have been admitted, as the true measure of damages in such cases is the probable ultimate value of the planted or unmatured crop minus what the inferior crop was really worth. *Malone* v. *Hastings* (1912) 193 Fed. 1.

This case arose in Texas, but the State courts there have rendered conflicting decisions on the question, *Jones* v. *George*, 56 Tex. 149, *Colorado Co.* v. *McFarland* (Tex. Civ. App.) 94 S. W. 400 and the federal court therefore followed the general rule, which is formulated as follows: "If under the evidence in the particular case, the damages are susceptible of reasonable computation, and are within the actual contemplation of the parties to the contract, there can be no valid reason for rejecting them merely because they are in the nature of lost profits or depend upon the estimated value of a growing but unmatured crop." In support of this rule are *Passinger* v. *Thorburn*, 34 N. Y. 634; *Wolcott* v. *Mount*, 36 N. J. L. 262; *Ferris* v. *Comstock*, 33 Conn. 513; *Page* v. *Pavey*, 8 C. & P. 769; *Flick* v. *Wetherbee*, 20 Wis. 392; *Wagstaff* v. *Short-Horn Dairy Co.*, 1 Cab. & E. 324; *Phelps* v. *Elyria Milling Co.*, 12 Ohio Dec. 692. For the rule in the analogous case of an action in tort for injury to growing crops, see 10 MICH. L. REV. 493. There is respectable authority repudiating the doctrine of the principal case on the ground that the value of a probable crop is in the nature of speculative profits and is too remote and uncertain to form the basis for the assessment of damages. *Butler* v. *Moore*, 68 Ga. 780; *Hurley* v. *Buchi*, 10 Lea 346; *Gresham* v. *Taylor*, 51 Ala. 505. That injuries to growing crops must be estimated with reference to their condition at the time of injury, see *Drake* v. *Chicago etc. Ry. Co.* 63 Iowa, 302.

DAMAGES—MASTER AND SERVANT—WRONGFUL DISCHARGE OF SERVANT.—Plaintiff sues to recover damages for breach of a contract under which he was employed by defendant for a period of one year at a stated salary payable monthly. The contract was dated September 1st, 1910, plaintiff was wrongfully discharged November 22nd, 1910, and brought this action December 5th, 1910. *Held*, that a wrongfully discharged employee may recover for any loss suffered by him during the entire unexpired term of employment, though he sues before the expiration of the time provided for by the contract, and though the trial is held before that time. *Helferich* v. *Sherman* (S. D. 1912) 134 N. W. 815.

This is a case of first impression in South Dakota and the court follows the rule as to the measure of damages recognized in *Cutter* v. *Gillette*, 163 Mass. 95, 39 N. E. 1010; *Wilke* v. *Harrison* 166 Pa. 202, 30 Atl. 1125; *Hamilton* v. *Love*, 152 Ind. 641, 53 N. E. 181; *Webb* v. *Depew*, 152 Mich. 698, 116 N. W. 560; *Pierce* v. *Tenn.* R. R. Co. 173 U. S. 1. The weight of authority as to the damages is with the principal case. However, in *Mt. Hope Cemetery Ass'n* v. *Weidenmann*, 139 Ill. 67, 28 N. E. 834 the court adopted the rule that plaintiff should be limited to his actual loss at the time of the trial, and declined to allow recovery of damages for the unexpired term of the contract subsequent to the trial. In *Doherty* v. *Schipper & Block*, 250 Ill. 128, 95 N. E. 74 a discharged employe had sued the employer for wages for one week and had recovered judgment; in a later suit by the employe for wages for

the remainder of the agreed term of service, the court held that the former judgment was a bar to the later action, holding that the only action arising from the breach was an action for damages, and all damages resulting from the breach must be recovered in one action. For a discussion of the question of "constructive service" as applied to such cases, see 10 MICH. L. REV. 68, and the following cases: *Marx* v. *Miller* 134 Ala. 347, 32 South 765; *Allen* v. *Colliery Engineers Co.* 196 Pa. 512; *Hinchman* v. *Matheson Motor Car Co.* 151 Mich 214, 115 N. W. 48; *Beck* v. *Tompson Spice Co.* 108 Ga. 242, 33 S. E. 894; *Keedy* v. *Long,* 71 Md. 385, 18 Atl. 704; *Keane* v. *Liebler,* 107 N. Y. Supp. 102; *James* v. *Allen Co.* 44 Ohio St., 226, 6 N. E. 246.

DEDICATION—REQUISITES, SUFFICIENCY AND ACCEPTANCE.—Where lots were sold with reference to a plat showing streets, *held* that this was a dedication of the streets to the public, and was effective without acceptance on the part of the municipality, but not to charge the municipality for repairs thereto. *Harrington* v. *City of Manchester* (N. H. 1912) 82 Atl. 716.

The Revised Statutes of New Hampshire, Chap. 53 Sect. 7 provided that "no highway not laid out agreeably to Statute law, shall be deemed a public highway, unless used by the public for twenty years." In interpreting this provision of the statute, the court in the above case said, that the statute altered the dedication of ways to public travel, only so far as it was necessary to establish an acceptance by the municipality, so as to render it liable to travellers for accidents for failure to make repairs. This case followed the distinction observed in New Jersey, namely, that acceptance by the public authorities or public user, is not essential to conclude the owner from his power of retraction, when his intention to abandon his property and dedicate it to public uses is once unequivocally manifested: *Trustees* v. *Hoboken,* 33 N. J. Law 13, 97 Am. Dec. 696. It is not necessary that the dedication be made to a corporate body capable of taking by grant. If accepted and used by the public, it works an estoppel *in pais,* precluding the owner from claiming an ownership inconsistent with such use. *Cincinnati* v. *White,* 6 Pet. 431. In England it is not necessary to charge a municipality with the duty of repairs, that it should have accepted the dedication: *Rex* v. *Leake,* 5 B. & A. 469. In America it is generally held that there must be an acceptance, express or implied, by the public authorities to charge a municipality. *State* v. *Bradbury,* 40 Me. 154; *State* v. *Wilson,* 42 Me. 9; *Ogle* v. *Cumberland,* 90 Md. 59. Dedication, being a question of intention, is a question of fact for the jury, *Trustees* v. *Hoboken, supra.* The creation of a highway by dedication does not as in prescription, depend upon duration of user, but on the fact of user with the consent of the owner. It is his intention, not the length of user, which determines the existence of a highway where circumstances are relied upon to establish it: *Bissell* v. *N. Y. etc. R. R. Co.,* 26 Barb. 630; *Mason* v. *Sioux Falls,* 2 S. D. 640, 39 Am. St. Rep. 802; *Mayberry* v. *Standish,* 56 Me. 342; *Carr* v. *Kolb,* 99 Ind. 53; *Cemetery Association* v. *Meninger,* 14 Kan. 312; *Ayres* v. *State,* 59 Ark. 26. Under the Michigan statute it has been held, that user for ten years will not of itself make a road a public highway, if proceedings have not been taken to lay it out as one: *Potter* v. *Safford,* 50 Mich. 46.